

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6), 61.876, 160.151, 160.380, [~~194A.050(1);~~] 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 211.684(1)(a), 403.352, 600.020(1), (40), (61), (62), [~~605.130(7); 605.150(1);~~] 620.050, 620.051, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which authorizes the cabinet to perform services necessary for the protection of children. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

- (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Child fatality" is defined by KRS 211.684(1)(a).
- (4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (5) "Sexual abuse" is defined by KRS 600.020(61).
- (6) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

- a. 922 KAR 1:480;
 - b. 922 KAR 1:320; or
 - c. 922 KAR 1:330, Section 11; or
2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

- (a) Remain on the central registry for a period of at least seven (7) years; and
- (b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

- a. Sexual abuse or sexual exploitation of a child;
- b. A child fatality related to abuse or neglect;
- c. A near fatality related to abuse or neglect; or
- d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x).

Section 3. Procedure for Requesting a Central Registry Check. (1) If information from the central registry is required by law, a request for a central registry check may be made by an:

- (a) Individual;
- (b) Organization; or
- (c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

(a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b)1. Applies for initial licensure;

2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or

3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

(a) By electronically submitting to the cabinet through the Kentucky Online Gateway:

1.a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or 922 KAR 2:280; or

b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

(i) The date of employment of an individual required by law to submit to a central registry check; or

(ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2. A nonrefundable fee of ten (10) dollars paid by credit or debit card; or

(b) Through another cabinet system, including the Kentucky National Background Check Program established by 906 KAR 1:190.

(5) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 5[4].

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

(2) An individual subject to administrative review in accordance with this section may submit a request for the disclosure of records in accordance with 922 KAR 1:510 to be fulfilled once the administrative review process is complete.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-156, Central Registry Check," 12/2021[~~8/2019~~]; and

(b) "DCC-374, Child Care Central Registry Check," 12/2021[~~8/2019~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbbs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 19, 2021

FILED WITH LRC: December 13, 2021 at 2:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse and neglect check using information in the central registry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for conducting child abuse and neglect checks of the central registry, as required by KRS 620.051(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the material incorporated by reference, the DPP-156 and DCC-374, for consistency

between electronic and hard-copy formats. The forms are being amended to address checks submitted by out of state employers and minors and to allow other forms of identifying information to be submitted.

(b) The necessity of the amendment to this administrative regulation: The cabinet's CA/N registry database was moved from being solely a paper-based process to an online database in order to improve background check efficiency. Minor changes in the forms are necessary to make the electronic versions more intuitive and easier to use. Years ago, the department experienced a backlog in completing these checks, but since moving to an electronic format, the department has been able to complete checks in a timely and responsive manner. In calendar year 2020, over 77,000 child abuse and neglect central registry checks were processed.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update of cabinet procedures for child abuse and neglect checks of the central registry. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancement of the cabinet's child abuse and neglect check procedures to provide a more efficient background check process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who are subject to statutory and regulatory requirements involving a child abuse and neglect check conducted by the cabinet are impacted by this administrative regulation. In calendar year 2020, over 77,000 child abuse and neglect central registry checks were processed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The central registry system is now available through an electronic format that is efficient and user-friendly. This amendment makes minor changes in the hard-copy and electronic forms. The electronic format allows for a much more timely background check to be completed, necessary for certain employment and volunteer opportunities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Minor form changes are being accomplished through this amendment, which will provide clarification and more options to individuals completing the form.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement these form changes.

(b) On a continuing basis: There is no cost to implement these form changes. The electronic format that is used in conducting these background checks saves the department in office supplies and postage costs, which was approximately \$8,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee

charged by the cabinet for a child abuse and neglect check is unchanged and is consistent with KRS 620.051(1). The fees collected support cabinet programing.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation includes a fee established by the General Assembly and codified in KRS 620.051(1). The fee is unchanged through this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(2) State compliance standards. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Public school districts are impacted by this administrative regulation through the statutory mandate for personnel and others on the grounds of a public school or on the site based decision making council to undergo a child abuse and neglect check conducted by the cabinet. Other governmental organizational units that require staff or providers to undergo child abuse and neglect central registry checks, such as the Department of Juvenile Justice or the Department for Medicaid Services, are impacted by this administrative regulation, but this amendment is minor and only provides clarification and alternatives for submitting identification.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2), 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation includes the fee codified in KRS 620.051(1) for child abuse and neglect background checks. The fees collected support cabinet programing. This amendment does not change the fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation enforces the fee codified in KRS 620.051(1) for child abuse and neglect background checks. The fees collected support cabinet programing. This amendment does not change the fee.

(c) How much will it cost to administer this program for the first year? This electronic format for background checks has minimal maintenance costs, offset by savings in office supplies and postage. This amendment has no cost associated.

(d) How much will it cost to administer this program for subsequent years? This program has minimal maintenance costs, offset by savings in office supplies and postage. This amendment has no cost associated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: